

Aberdeen School District No. 5

216 North G Street, Aberdeen, WA 98520-5297

Martin Kay, *Superintendent*

(360) 538-2000

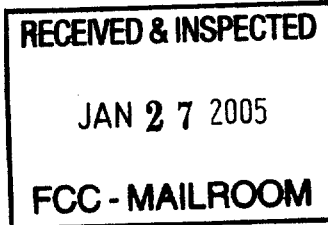
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January 20, 2005

DOCKET FILE COPY ORIGINAL

Application for Review
Secretary
Federal Communications Commission
Washington D.C. 20554



Reference: CC Docket No. 02-6
DA 04-3686 Released November 24, 2004
DA 04-3194, November 24, 2004

On November 17, 2000 Aberdeen School District filed a Funding Year 4 Form 470 ERate "Description of Services Requested and Certification Form" with The Schools and Libraries Division (SLD) for wide area network connections to each of our schools (Application Number 778470000311109). Since this service would provide each building access to the Internet, I applied for these services under the category of "Internet Access" under Block 2 of the Form 470. The other two possible categories under which I could have applied are "Telecommunication Services" and "Internal Connections". The purpose of filing a Form 470 is to provide the opportunity for any vendor to review these Forms from all applicants throughout the country and bid for requested services. This helps to assure that there are competitive bids being received by the entity requesting services. Our Form 470 was accepted and we proceeded to identify CenturyTel as the vendor that would provide the services requested and entered into a multi-year contract with them for those services. After filing our Form 471 and all the additional forms necessary to complete the annual process, we subsequently received the reimbursement we were entitled to for Funding Year 4 under program guidelines. While we received approval and eventual funding for Year 4, during the course of filing the necessary forms and providing additional information as requested by SLD representatives, one of those representatives suggested that perhaps we should have applied for the services requested under the category "Telecommunications" rather than "Internal Connections" as we actually had (and been accepted for).

The problem arose in the next year's application (Funding Year 5). Under Program rules, if a Form 470 is filed and accepted and a program-eligible contract is entered into with a service provider, the Form 470 that led to that contract can be used as reference for the Forms 471 filed during the life of the contract. This meant that we did not need to file a Form 470 for Funding Year 5. Rather, we referred to the Form 470 #778470000311109 filed during the previous year. However, in going through my notes from the previous year, we saw the recommendation we had received from the SLD representative that perhaps the category should be changed. Not realizing this would cause our funding request to be denied, we requested funding on our Form 471, Block 11 under the Category of Service: "Telecommunications Service" instead of the category "Internet Access" as identified on our Form 470 #778470000311109 from the prior year. The "Funding Commitment Decision Explanation" dated April 24, 2002 we received stated: "The 470 cited did not include service of this type; therefore

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This District is an Equal Opportunity Employer

No. 6-1000-1000
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it does not meet the 28 day competitive bidding requirement." Please note that as I described earlier, if a contract is entered into that complies with SLD requirements, in subsequent years, you need not submit another Form 470 as long as the contract is in effect.

In a letter to the Schools and Library Division dated April 29, 2002, we appealed the decision. The main body of that letter of appeal follows:

*Aberdeen School District (Billed Entity No. 145297) was denied funding for **Form 471 Application No. 297249**. The stated reason for denial was that "The 470 cited did not include service of this type; therefore it does not meet the 28 day competitive bidding requirement." Since this request was covered under an existing contract, our 471 Application referred to **Form 470 Application No. 778470000311109**. The category of service was inadvertently changed from "Internet Access" on the Funding Year 4 **Form 470 Application No. 778470000311109** to "Telecommunication Services" on Line 11 of **Form 471 Application No. 297249**. Because this service is eligible for funding, has remained constant and was funded during Year 4, we feel denial of our 471 Application is not a proper decision. In keeping with the spirit of the Universal Access Program we are asking the SLD to reconsider their decision in this matter. I am available to answer any questions.*

In a letter from the SLD dated June 24, 2002, we were informed that our appeal had been "Denied in full"

Under the explanation they provided:

- "Your appeal states that funds were denied because the Form 470 did not include service of this type. You stated that due to an error, you inadvertently choose (sic) the wrong service category. You would like the SLD to change the service category to Internet access and provide discount for this request." (Note: As you can see from my initial appeal letter above, I did not request they change the service category)
- "According to the information submitted as Item 21 attachment in support of this request, services requested qualify for e-rate discount under the Telecommunications category. During the initial interview process, you were contacted and requested to provide a 470# that posted for Telecommunications services. You responded to the reviewer, you email dated March 24, 2002, that the Form 470 used to comply with the 28-day bidding regulation was Form 470# 778470000311109. The cited Form 470 did not post for Telecommunications services. You have not claimed that this Form 471 relates to a different Form 470 other than the Form 470 indicated above. Consequently, SLD denies your appeal."

(Note: I could not provide a Form 470 that posted for Telecommunications services because the only Form 470 ever filed for these services was # 778470000311109, which requested services under the Category: Internet Access, which category, incidentally, was approved for the services in question by SLD for Fiscal Year 4 and Fiscal Year 6!)

Upon this appeal denial, the next course of action available to the Aberdeen School District was to file an appeal to the Federal Communications Commission. This appeal was filed in a letter dated July 8, 2002. The main body of the letter is below:

This second letter of appeal is in reference to a Funding Commitment Decision (FCD) letter we received on April 29, 2002. This letter was in reference to:

Billed Entity Number: 145297
Form 471 Application Number: 297249
Funding Year 2002: 07/01/2002 – 06/30/2003
Funding Request Number: 762167

The Initial FCD was to deny funding. The explanation was: "The 470 cited did not include service of this type; therefore it does not meet the 28 day competitive bidding requirement." This decision was appealed (Attachment #1).

We recently received an "Administrator's Decision on Appeal – Funding Year 2002-2003" Letter dated June 24, 2002. The decision on appeal was to deny in full any requested funds. The letter states in the first bulleted paragraph "...due to an error, you inadvertently choose the wrong service category. You would like the SLD to change the category to Internet access and provide discount for this request."

- I did not request that we would like the SLD to change the service category. As I stated in our original appeal letter (Attachment #1), Form 470 (778470000311109) requested "Internet Access" as the category of service (Block 5 #11). We were awarded funding in that category for Year 4 (2001-2002). When we filed our 2002-2003 Form 471 Application No. 297249, the category of service (Block 5 # 11) was inadvertently changed from "Internet Access" to "Telecommunication Services". Form 471 Application No. 297249 was not filed for new services; it was filed for services covered under an existing contract that were deemed eligible and funded in Year 4 (FRN 637315), therefore no new 470 was filed for 2002-2003. As such, there should not be any 28-day competitive bidding required.

The second bulleted paragraph states: "According to the information submitted as Item 21 attachment in support of this request, services requested qualify for e-rate discount under the Telecommunications category."

- The agreement entered into between Aberdeen School District and CenturyTel is titled as an "Agreement for Telecommunication Services". This is most likely the reason for the change of "Category of Service" listing. However, the contract is for the same services provided the previous year which was awarded funding through the Erate Program. I would hope that merely changing the words in the "category of service" column would not deny us the funding we feel we deserve, especially since the services we are receiving would apparently be eligible under either category selected and were funded in Year 4 (2001-2002) under the "Internet Access" category. We are leasing transport from a telecommunications company (CenturyTel) to allow Internet access to students and staff at all eligible sites within the Aberdeen School District.

The letter also states in the second bulleted paragraph that we "... were contacted and requested to provide a 470# that posted for Telecommunications services."

- In fact, the email (Attachment #2) requested "...establishiong 470 application number in reference to your 471 application number 297249" (sic).
- In response to that email, I replied (Attachment #2) and provided the original Form 470 number from Year 4 (778470000311109) which was the number used for the application in question.

The funds affected by this decision are relied upon to enhance technology-related services provided through the limited technology budget within our district and would be sorely missed. We hope that you will take into account all the information provided here and reconsider the decision made earlier in this matter. I am available to answer any questions.

Sincerely,

*Michael R. Williams
Technology Director
Aberdeen School District No. 5
216 North "G" Street
Aberdeen, WA 98520
Ph.: 360-538-2036
FAX: 360-538-2014*

Please note that the only correspondences ever received from the FCC regarding this appeal until the memo and appeal denial we received last month, were 1) a voice mail received September 12, 2002 from a Mr. Eric Johnson who identified himself as an attorney with the Federal Communications Commission responding to a request I made on August 21, 2002 for information regarding the status of our appeal since we had not received any acknowledgement; and 2) voice mails received on August 20, 2004 from Narda Jones and Jennifer Schneider again received only after I had requested assistance from Ellen Wolfhagen, who was with the State of Washington K-20 Program Office at that time.

On December 3, 2004 I received a memo from Narda Jones, Chief of the Telecommunications Access Policy Division Wireline Competition Bureau dated November 30, 2004. Accompanying that memo was a FCC Commission's decision (Reference: DA 04-3686, November 24, 2004). This decision was to deny the Request for Review for Aberdeen School District No. 5.

In addition to the information we have already provided, we would like to add the following:

We believe both the SLD and FCC are being too rigid in their decision-making in this case. The services being requested were funded the year prior to and funded after the year funding was denied. Whether or not it is identified as "Internet Access" or "Telecommunications" seems to be irrelevant as the SLD indicates they think it should be classified as Telecommunications, yet they have approved applications and funded us for these services using a Form 470 (#778470000311109) that identifies the services as "Internet Access". We made an honest mistake when we attempted to heed their advice and changed the category to "Telecommunication Services" on our Form 471 Application Number 297249 in 2002. When they denied our request for funding due to this error, we appealed, thinking that, since they had funded the identical service in question from that Form 470 (#778470000311109) the year previous, they would surely fund it again.

If one reads the Appeals Guidelines on the Schools and Libraries web site <http://www.sl.universalservice.org/Content/Inc/reference/AppealsSLDGuidelines.asp> it states that The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) reviews appeals of its decisions in accordance with guidelines established by the

Schools and Libraries Programmatic Subcommittee of the USAC Board of Directors. **There are four circumstances when appeals can be granted by USAC...**

Item 2 under these listing of circumstances states that an appeal can be granted: **When the appeal makes clear that the applicant made a mistake in information provided in or with the application leading to funding denial and that the SLD could have identified the mistake from information provided with the application.** We feel our appeal fell under this category. The original Form 470 Application number (#778470000311109) was in that Application. Our request for services in Form 471 Application # 297249 referred to that Form 470. Correspondence with SLD representatives in March 2002 indicated we were referring to the services requested in that Form 470 (#778470000311109), that an error was made and we were not requesting new services from a non-existent Form 470. The mistake was identified and could easily have been rectified at that time, but was not.

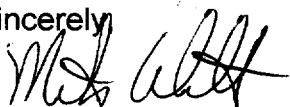
Our initial appeal was filed in plenty of time for them to include it in the "funding window" for Fiscal Year 5. The fact that they were not able to respond to the appeal until not only long after that filing window was closed, but not until two additional years had passed should not result in us getting penalized "due to not allowing them to meet their document demands in a timely fashion".

An appeal should allow us to explain the reason we did not "list its request as one for Internet Access on its FCC Forms 470 and 471 consistently". Did we make a mistake by attempting to follow the advice of one of the SLD staff people and applying for the services requested under a different category the second year? Evidently yes. However, let me restate that, since the SLD has approved funding for these services under the "Internet Access" category, yet state in their letters that these services should be requested under the "Telecommunication Services" category, they have also added a considerable bit of confusion into their own decision.

We were not in any way attempting to defraud the E-rate program. We merely made a mistake (based on a recommendation made by an SLD representative) and feel the SLD and FCC are being too rigid in their response to our appeal in this matter. The program has been made much more cumbersome and difficult than it should be. There are many small school districts that qualify for E-rate funds, yet don't participate in the program because of its complexity and the time required to follow through with the entire process. Rather than working to find ways to deny funding, the parties responsible for managing the program should be more interested in simplifying the process, thus encouraging those needing its benefits most to take advantage of them.

Thank you for considering this application for review and any assistance you can provide us in hopefully resolving this matter. If you have any further questions and/or comments regarding this issue, please contact me.

Sincerely,



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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review)	
)	
Aberdeen School District No. 5)	File No. SLD-327601
Aberdeen, Washington)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: November 23, 2004

Released: November 24, 2004

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Aberdeen School District No. 5, Aberdeen, Washington (Aberdeen) seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ The decision denied Aberdeen's Funding Year 2002 application for discounted services under the schools and libraries universal service mechanism on the ground that Aberdeen violated the Commission's competitive bidding requirements.² For the reasons set forth below, we deny Aberdeen's Request for Review.

2. The Commission's rules require applicants to make bona fide requests for services by filing with the Administrator an FCC Form 470.³ There are three categories of services for which applicants may request support: telecommunications services, Internet access, and internal connections. In Funding Year 2002, applicants were required to provide SLD with information about the category of services they were requesting. Specifically, in FCC Form 470,⁴ Item 8 was to be completed for requests for telecommunications services, Item 9 was to be completed for requests for Internet access, and Item 10 was to be completed for requests for internal connections.

¹ Letter from Michael R. Williams, Aberdeen School District No. 5, to Federal Communications Commission, filed July 10, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael R. Williams, Aberdeen School District No. 5, dated June 24, 2002 (Administrative Decision on Appeal).

³ 47 C.F.R. § 54.504(b); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁴ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (September 1999) (Form 470 Instructions).

3. Upon submission of the FCC Form 470 to SLD, each request is posted to the Administrator's web site for all potential competing service providers to review. The applicant must then wait at least 28 days before entering into an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁵ To demonstrate compliance with the competitive bidding requirements, the applicant must, in connection with each funding request, cite an FCC Form 470 seeking the same category of service later contracted for and reflected in the FCC Form 471.⁶

4. On November 17, 2000, Aberdeen submitted an FCC Form 470 to SLD for Funding Year 2001.⁷ Aberdeen completed Item 9 of the FCC Form 470, and left Items 8 and 10 blank. In doing so, Aberdeen indicated to SLD that it was requesting only "Internet access services."⁸ In accordance with the Commission's rules, that request was posted to SLD's web site to solicit bids.⁹ On January 17, 2002, Aberdeen filed an FCC Form 471 and cited its Funding Year 2001 FCC Form 470 as the establishing Form 470.¹⁰ In Item 11, Block 5 of the FCC Form 471 ("Category of Service"), Aberdeen designated its request as "telecommunications services."¹¹ The service contract attached to the FCC Form 471 explained that the agreement was for "transport and/or an Ethernet interface for customer's local area network and/or wide area network applications."¹²

5. Upon review of the funding request, SLD determined that the request was not consistent with the establishing FCC Form 470.¹³ Thus, SLD found that Aberdeen's request was not posted correctly on SLD's web site for competitive bidding and, consequently, denied its request for funding.

6. In the instant Request for Review, Aberdeen asserts that it inadvertently changed Block 5, Item 11 of the FCC Form 471 from "Internet Access" to "Telecommunications Services."¹⁴ Aberdeen states that its FCC Form 471 was not filed for new services; rather, it was filed for services under an existing contract that received support in Funding Year 2001.¹⁵

7. The Wireline Competition Bureau has previously held that it is administratively necessary to require an applicant to be responsible for providing complete and accurate information in its

⁵ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁶ Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999), at 19 (FCC Form 471 Instructions).

⁷ FCC Form 470, Aberdeen School District No. 5, filed November 17, 2000.

⁸ *Id.*

⁹ 47 C.F.R. § 54.504(b), (c); FCC Form 471.

¹⁰ FCC Form 471, Aberdeen School District No. 5, January 17, 2002 (Aberdeen FCC Form 471).

¹¹ Aberdeen FCC Form 471, Block 5.

¹² *Id.* at Attachment.

¹³ See Administrative Decision on Appeal.

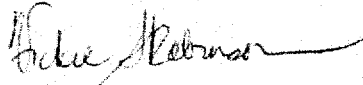
¹⁴ Request for Review.

¹⁵ *Id.*

FCC Form 471.¹⁶ It is impractical, if not impossible, for SLD to review each application and notify applicants of errors prior to the close of the filing window. If applicants were permitted to correct their applications after the window closed, it would eliminate any incentive to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion. Moreover, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.¹⁷ Because Aberdeen did not list its request as one for Internet access on its FCC Forms 470 and 471 consistently, it failed to satisfy the Commission's competitive bidding requirements. Consequently, we must deny its Request for Review.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Aberdeen School District No. 5, on July 10, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Vickie S. Robinson
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁶ 47 C.F.R. § 54.504 *et seq.*; see also *Request for Review by South Barber Unified School District 255, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-158897, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 18435 (Com. Car. Bur. 2001).

¹⁷ *Id.*